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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

EDWARD S. PALMA and ESTARLINA N. PALMA,

Debtors.

BANKRUPTCY NO. **10-06826-LA7**

**BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME
LOANS SERVICING LP, and its successors and/or assignees,**

Moving Party

RS NO. **KAM-1**

**EDWARD S. PALMA and ESTARLINA N. PALMA, Debtors,
and GREGORA A. AKERS, Trustee,**

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY

☒ **REAL PROPERTY** ☐ **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below:

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on **4/25/10**.

2. Procedural Status:

a. ☒ Name of Trustee Appointed (if any): **GREGORA A. AKERS**

b. ☐ Name of Attorney of Record for Trustee (if any):

c. ☐ (Optional) Prior Filing Information:

Debtor has previously filed a Bankruptcy Petition on: _____.

If applicable, the prior case was dismissed on: _____.

d. ☐ (If Chapter 13 case): Chapter 13 plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:

a. Street address of the property including county and state:

2006 MOUNT BULLION DRIVE

CHULA VISTA, CA 91913

b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):

Single family residence

c. Legal description of property is attached as Exhibit A.

- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtors' Schedules: \$315,000.00.
- f. *Nature of Debtors' interest in the property:

Owners

2. ☐ The following personal property is the subject of this Motion (*describe property*):

- a. Fair market value of property as set forth in the Debtors' Schedules: \$_____.
- b. Nature of Debtors' interest in the property:

3. *Fair market value of property according to Movant: \$_____.

4. *Nature of Movant's interest in the property: **Secured Creditor holding a First Note and Deed of Trust on the subject property.**

5. *Status of Movant's loan:

- a. Balance owing on the date of Order for Relief: \$357,598.37
- b. Amount of monthly payment: \$1,679.70
- c. Date of last payment: 4/15/2009
- d. If real property,
- i. Date of default: 5/1/2009
- ii. Notice of Default recorded on: 10/2/2009
- iii. Notice of Sale published on: 3/15/2010
- iv. Foreclosure sale currently scheduled for: 4/6/2010
- e. If personal property,
- i. Pre-petition default: \$_____ No. of months: _____
- ii. Post-petition default: \$_____ No. of months: _____

6. (*If Chapter 13 Case, state the following:*)

- a. Date of post-petition default: _____
- Amount of post-petition default: \$_____

7. Encumbrances:

- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months:		Post-Petition Arrearages Total Amount - # of Months	
1 st : BAC HOME LOANS	\$357,598.37	\$20,156.40	12	\$5,039.07	3
2 nd : BAC Home Loan Servicing, LP	\$86,000.00				
3 rd :					
4 th :					
Totals for all Liens:	\$443,598.37	\$20,156.40	12	\$5,039.07	3

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in the schedules or otherwise known to Movant:
- ☐ See attached page, if necessary.

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5.)

8. Relief from the automatic stay should be granted because:
- ☒ Movant's interest in the property described above is not adequately protected.
 - ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
 - ☐ The property is a "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or ____ days as ordered by this court) have passed since the entry of the order for relief in this case, and
 - The Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - The Debtor/Trustee has
 - ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - ☐ commenced payments, but such payments are less than the amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
 - ☒ *Other cause exists as follows (*specify*): ☐ See attached page.
The Debtors is surrendering the property as stated in the Debtors' Statement of Intent attached as Exhibit "F."

Movant attaches the following:

- ☒ Other relevant evidence:
Debtors' Schedules as Exhibit "E"
Debtors' Statement of Intent "F"
An Assignment of Deed of Trust as Exhibit "G"
- ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief from the automatic stay to allow BAC HOME LOANS to enforce its rights and remedies under its Note and Deed of Trust.
- ☒ Other: **BAC HOME LOANS requests a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.**

Dated: **July 9, 2010**

/s/ KERRY A. MOYNIHAN
[Attorney for] Movant,

SHM/BAC/m64978

* Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).